

Department of Veterans Affairs

§ 21.4009

(1) Where it is determined prior to payment that a certification or claim is false or misleading, payment will be authorized for only that portion of the claim to which entitlement is established on the basis of other evidence of record.

(2) When the Department of Veterans Affairs discovers that a certification or claim is false after it has released payment, the Department of Veterans Affairs will establish an overpayment for only that portion of the claim to which the claimant was not entitled.

(Authority: 38 U.S.C. 3680)

(b) *Effect of false statements on subsequent payments.* A claimant's false or misleading statements are not a bar to payments based on further training.

(Authority: 38 U.S.C. 3680)

(c) *Forfeiture.* The provisions of this section do not apply when forfeiture of all rights has been or may be declared under the provisions of § 21.4007.

(Authority: 38 U.S.C. 6103)

[31 FR 6774, May 6, 1966, as amended at 38 FR 14932, June 7, 1973; 48 FR 37976, Aug. 22, 1983]

§ 21.4007 Forfeiture.

The rights of a veteran or eligible person to receive educational assistance allowance or special training allowance are subject to forfeiture under the provisions of §§ 3.900, 3.901 (except paragraph (c)), 3.902 (except paragraph (c)), 3.903, 3.904, 3.905 and 19.2 of this chapter.

(Authority: 38 U.S.C. 6103, 6104 and 6105)

[54 FR 4286, Jan. 30, 1989]

§ 21.4008 Prevention of overpayments.

When approval of a course may be withdrawn, and overpayments may exist or be created, the Department of Veterans Affairs may suspend further payments to veterans or eligible persons enrolled in the school until the question of withdrawing approval is resolved. See § 21.4210.

(Authority: 38 U.S.C. 3690(b))

[48 FR 37976, Aug. 22, 1983, as amended at 63 FR 35831, July 1, 1998]

EFFECTIVE DATE NOTE: At 63 FR 35831, July 1, 1998, § 21.4008 was amended by removing

“§ 21.4134”, and adding, in its place, “§ 21.4210”, effective July 31, 1998.

§ 21.4009 Overpayments; waiver or recovery.

(a) *General.* (1) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of that veteran or eligible person.

(2) The amount of the overpayment of educational assistance allowance or special training allowance paid to a veteran or eligible person constitutes a liability of the education institution if the Department of Veterans Affairs determines that the overpayment was made as the result of willful or negligent:

(i) Failure of the educational institution to report, as required by §§ 21.4203 and 21.4204, discontinuance or interruption of a course by a veteran, reservist or eligible person, or

(ii) False certification by the educational institution.

(3) If it appears that the falsity or misrepresentation was deliberate, the Department of Veterans Affairs may not pursue administrative collection pending a determination whether the matter should be referred to the Department of Justice for possible civil or criminal action. However, the Department of Veterans Affairs may recover the amount of the overpayment from the educational institution by administrative collection procedure when the Department of Veterans Affairs determines the false certification or misrepresentation resulted from an administrative error or a misstatement of fact and that no criminal or civil action is warranted.

(4) If the Department of Veterans Affairs recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Department of Veterans Affairs subsequently collects the overpayment from a veteran or eligible person. The reimbursement—

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and